

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**May 11, 2005**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Lalwani** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Azevedo, Galang, Garcia, Lalwani, Mandal, Mohsin and Williams  
Absent:  
Staff: Heyden and Rodriguez

**III  
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**Julie Cherry, 2312 Lacy Drive**, with the Milpitas Alliance for the Arts and the Art in Your Park Project, has met with neighbors in the park and come up with an idea for art in their park. She explained that the Alliance raises the money to put the piece in their park. She showed the Commission three models created by different artists and asked for their opinion in determining which is the best one for the park.

**IV.  
APPROVAL OF MINUTES  
April 27, 2005**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of April 27, 2005.

There were no changes from staff.

**Motion** to approve the minutes as submitted.

M/S: Mohsin/Galang

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Mandal) – Absent at the April 27<sup>th</sup> meeting.

**V.  
ANNOUNCEMENTS**

Staff had no announcements.

**Commissioner Mohsin** announced that the Sunnyhills Youth Association is going to have a fundraiser on May 17<sup>th</sup> at the McDonalds on North Milpitas Blvd. from 5 to 8 p.m.

**VI.  
CONFLICT  
OF INTEREST  
VII.  
APPROVAL OF  
AGENDA**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda.

M/S: Galang/Mandal

AYES: 7

NOES: 0

**VIII.**  
**CONSENT CALENDAR**  
**Consent Item Nos. 2, 3, 4, 5,**  
**6, 7, 8, 9, 10 and 11**

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

**Tambri Heyden, Acting Planning and Neighborhood Services Director**, pointed out that there was a handout distributed this evening pertaining to Agenda Item No. 5 (Use Permit No. UP2005-7). She explained that there are some business owners in the shopping center objecting to this request. Staff created a cover memo addressing the issues that have been changed and are not proposing any changes. Also for item No. 10, (Use Permit No. UP2005-9), there was a condition of approval added that reads as follows:

- 4. During the hours of operation or whenever music is played, all doors and windows shall be closed to reduce any interfering noise to adjacent properties.*

**Vice Chair Garcia** requested that Item No. 5 (Use Permit No. UP2005-7) be taken off of consent.

**Commissioner Williams** requested that Item Nos. 7 (Use Permit Amendment No. UA2004-9 and "S" Zone Approval Amendment No. SA2004-91), 8 (Use Permit No. UP2005-8 and "S" Zone Approval Amendment No. SA2005-27) and 9 (Use Permit No. UA2005-5 and "S" Zone Approval Amendment No. SA2005-28) be removed from the consent calendar.

Chair Lalwani opened the public hearing on Item Nos. 2, 3, 4, 6, 10 and 11.

There were no speakers from the audience.

Vice Chair Garcia asked about Item No. 4 (Time Extension No. TE2005-1) and asked if there are substantial changes to the plan. **Troy Fujimoto, Acting Associate Planner** remarked that the changes from the plan only to apply to the conditions of the approval, which are the colors and the roof elevations. Vice Chair Asked if it will be coming back to the Planning Commission and Mr. Fujimoto remarked "No".

Ms. Heyden asked if the Commission desires a brief presentation or are their questions to be raised pertaining to the items taken off of the consent calendar. Vice Chair Garcia said that he wants to air out the presentation in public and Commissioner Williams noted that he has concerns and wants to add a condition pertaining to all three items.

**Motion** to close the public hearing on Consent Item Nos. 2, 4, 6 and 10 and continue Item Nos. 3 and 8 to the June 8, 2005 meeting.

M/S: Williams/Azevedo

AYES: 7

NOES: 0

**Motion** to approve the Consent Calendar on Consent Item Nos. 2, 4, 6, and 10 and continue Item Nos. 3 and 11 to the June 8, 2005 meeting.

M/S: Williams/Galang

AYES: 7

NOES: 0

- \*2 VESTING MINOR TENTATIVE MAP NO. MI2004-2, SITE AND ARCHITECTURAL REVIEW NO. SZ2004-9 AND USE PERMIT NO. UP2005-3 (Continued from April 27, 2005):** A request to subdivide a parcel into two separate parcels, construct two buildings containing a total of 481 multi-family residential apartment units, and a request for exceptions to the R4-TOD development standards for setbacks, open space, and number of floors at the corner of Great Mall Parkway and Main and Abel Streets.
- \*3 USE PERMIT APPROVAL AMENDMENT NO. UA2004-10, "S" ZONE APPROVAL AMENDMENT NO. SA2004-100 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2005-2 (Continued from April 27, 2005):** A request for approval to demolish four (4) existing church ancillary buildings (totaling 21,150 square feet), and construction of two (2) new ancillary buildings (totaling 46,350 square feet), with site modifications that include a parking reduction, removal of protected trees, and landscaping, located at 1000 South Park Victoria Drive.
- \*4 TIME EXTENSION NO. TE2005-1:** A request for a one time 18-month time extension for a previously approved 5,000 square foot restaurant (use permit) and an 11,000 square foot, two story office building (S-Zone), with previously approved variances to development standards, at 750 E. Calaveras Boulevard.
- \*6 USE PERMIT AMENDMENT NO. UA2005-4 AND "S" ZONE APPROVAL AMENDMENT NO. SA2005-25:** A request to replace an existing 10'-7" monument sign with 7' sign and other exterior site upgrades including repainting the canopy and building, replacing pump valences and other site signage at 1640 N. Milpitas Blvd.
- \*10 USE PERMIT NO. UP2005-9:** A request to locate a music school located at 1209 S. Park Victoria Drive.
- \*11 CONSIDER AERIAL STATION AND LINE SEGMENT ALTERNATIVE TO RETAINED CUT DESIGN FOR THE FUTURE MONTAGUE/CAPITOL BART FACILITY.**

## IX. PUBLIC HEARING

1.

### **VESTING MAJOR TENTATIVE TRACT MAP NO. MA2005-4, SITE AND ARCHITECTURE REVIEW NO. SZ2004-9 AND USE PERMIT NO. UP2005-3**

**Troy Fujimoto, Assistant Planner,** presented a request to subdivide a parcel into two separate parcels and create 481 multi-family residential units, and a request for exceptions to the R4-TOD (Multi-Family Very High Density with a Transit Oriented Development Overlay) development standards for setbacks, open space, and number of floors at the corner of Great Mall Parkway and Main and Abel Streets and recommended the Commission approve Site and Architecture Review and Use Permit, recommend approval to City Council of Vesting Major Tentative Tract Map and Owners Participant Agreement. Mr. Fujimoto also recommended that the Commission approve the following modified special conditions:

- 4. *Park and Open Space Requirement - Prior to issuance of any building permits or final map approval, satisfaction of this obligation shall be through dedication of acreage in close proximity to the project and/or improvements for park purposes equal to \$1,314,786. If however, it can be demonstrated to City staff that this is not possible, an in-lieu fee in this amount will be accepted. (P)*

73. *Three Bedrooms - Prior to building permit issuance, building permit plans shall include a minimum of 11 three-bedroom units throughout the project. (H)*
74. *Affordable Housing - Prior to building permit issuance, the applicant shall provide proof of the provision of 5% of total units to be available at the very low affordability level, 1% at the low affordability level, and 15% of the total units to be available at the moderate affordability level. (H)*
75. *Affordable Housing - Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 100 affordable housing units (20% of allowed 481 units) will be available at a housing cost affordable to very low and moderate-income households as noted in the matrix below:*

<i>Income Level</i>	<i>No. of Units</i>	<i>Unit Type</i>
<i>Very Low</i>	<b>24</b>	<i>Number of one and two bedroom units (TBD)</i>
<b><u>Low</u></b>	<b>4</b>	<b><u>Number of three bedroom units</u></b>
<i>Moderate</i>	<b>72</b>	<i>Number of one, two and three bedroom units (TBD)</i>

76. *Affordable Housing - The applicant shall make at least 3 of the three bedroom units available to moderate income households and 4 of the three bedroom units available to low income households. (H)*
83. *Modifications to Project: To accommodate the four additional 3-bedroom units, minor modifications (such as number of units, building architecture and footprint) to the project will be reviewed and approved by the Planning Division. (P)*

Vice Chair Garcia asked why is this project being separated into two separate parcels. Mr. Fujimoto deferred the question to the applicant.

Vice Chair Garcia asked how will the City manage the 100 units that are affordable. Mr. Fujimoto said that the Housing Division maintains the affordable housing units. The Housing Division, in conjunction with the applicant, ensures qualified people are in the units.

Vice Chair Garcia noted that under the park fees section, 1.95 acres includes the park, balconies, patios, recreation area, pool and spa. He asked if it is standard practice. Mr. Fujimoto replied that the ordinance allows staff to calculate a portion of the required park space, up to 43% of the Midtown Area as private open space.

Vice Chair Garcia noted that there would be insufficient on street parking around the project site and asked staff to clarify. Mr. Fujimoto responded that one of the goals of the Midtown Specific Plan is to provide higher density and promote pedestrian uses and alternative transit. It is a benefit that the project is located right next to the light rail station and park and ride. The Midtown Plan and Zoning Ordinance allow a reduction for parking because the project is located in the transit overlay district.

Vice Chair Garcia asked about special condition no. 8 which reads as follows:

*\*8 Community Facilities District - Prior to final map approval, the developer shall submit an executed petition to annex into and establish, with respect to the property, the special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services. No final map will be approved without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)*

Mr. Fujimoto replied that the Community Facility District is a condition of approval that the applicant will have to adhere to including maintaining all of their on-site improvements.

**Commissioner Mandal** asked if the construction of the two buildings would be phased. Mr. Fujimoto replied that staff was concerned that there would be phasing because of two separate parcels, however the applicant has made it clear that their intent is not to phase the project. Staff provided the following condition of approval:

*\*37Phase - Prior to occupancy of the first phase of the project, building permits shall be procured and construction begun (building slab be installed) on the second phase. (P)*

Commissioner Mandal asked why staff is recommending that the 200 square foot density be waived. Mr. Fujimoto noted that it is a development standard for the R4 zoning district however with every project of higher density, none has been able to meet the 200 square foot standard in the Midtown area.

Commissioner Williams was concerned about traffic near the intersections of Abel and Main street because he lives in the area and many times cars make u-turns coming from Great mall parkway on the double line median onto Abel Street. He asked if staff has done any analysis following through with the recommendation from the traffic consultant to extend the median to prevent cars from making a left hand turn into the project from Abel near the Great mall Parkway intersection. Mr. Fujimoto pointed out that there are two accesses on Abel Street and one is closer to Great Mall Parkway. Staff is recommending that a median be constructed so that cars cannot make a left turn into the first driveway, however, the median will be extended the project length and there is a left turn pocket into the project with a signal light that cars will be able to use.

Commissioner Galang noted that the applicant is proposing three elevators at the western building and two elevators at the eastern building. He asked what type of elevator would be used. Mr. Fujimoto said that per the fire code at least one should be able to accommodate a stretcher.

Chair Lalwani invited the applicant to make a presentation.

**Shon Finch, Applicant with Fairfield residential** presented a PowerPoint presentation that showed photos of their interior units which included: 1) living space amenities such as crown molding and appliances, counter tops and flooring, 2) the community room which has a fire place and TV, 3) exercise facility, 4) courtyard and 5) swimming pool.

**Denis Henmi, Architect**, commended the city in creating the midtown plan because his firm's vision is to create an urban downtown core and promote public transportation. The design consultants have done the following for the Fairfield project:

- Providing pedestrian oriented access and circulation
- It is an open community, not a gated community
- Internal parking structures are covered by the homes
- On grade parking is minimized
- Numerous spaces for guest parking are provided along the creek which will also provide access to the hiking trail

In response to Commissioner Williams's comment regarding the left hand turn into the project from Abel near the Great Mall Parkway intersection. Mr. Henmi explained that the developer would install a median improvement to the left hand turn lane. The project is 8.2 acres with 481 units, a density of 58 units per acre with 649 resident spaces, 99 visitor spaces and 748 total spaces with an approximately 60 feet maximum height. His team has done a lot of research and came to the conclusion that parking should be at 1-½ spaces. again, the team doesn't want to promote a lot of cars, which is a goal of transit development. He pointed out that the interior spaces will have full appliance packages including a range, refrigerator, microwave, dishwasher and garbage disposal and will consist of high quality flooring, fixtures and lighting, crown molding, nine foot ceilings and prewired high speed fax/modem, data and telephone lines

Mr. Finch summed up that 20% of the units will be below market housing, the project is a transit oriented development and the goal is to reduce the reliance on autos, the right-of-way improvements and beautification will be provided by the developer along South Able, Great Mall Parkway and Main Street, the development will pay 1.3 million in city park fees and \$900,000 will be paid to MUSD. He also pointed out that Fairfield concurs with the condition of approval and also staff's modifications to the conditions of approval.

Commissioner Mandal thought that the rooms looked like luxury apartments and asked if the Fairfield rooms will look exactly like the photos in the PowerPoint presentation and Mr. Finch said yes.

Commissioner Williams asked staff how they would ensure that the 99 stalls for guest parking would be available and not being taken upon by those living at the complex.

Mr. Finch responded that Fairfield manages a significant amount of homes in the country and all problems are handled through management. Management makes sure the tenants do not exceed their limits. The goal of management is to encourage the tenants to want to live there and that includes making sure that the guest parking remains for guests.

Commissioner Williams asked if Fairfield has a successful track record and Mr. Finch said yes.

Commissioner Williams pointed out that he really likes the design because it has foliage that enhances the area. He asked if there would be a lot of surface lighting or pole lighting.

Mr. Finch explained that they need to meet criteria for a safe environment while not exceeding light standards so it spills out over the project and effects neighbors and traffic. They would include up lighting on the buildings, planting materials, pole lighting and lighting to illuminate the walkways and entry points.

Commissioner Galang asked about the elevators. He noted that last year behind Embassy Suites, the power went the power went out of his building and he heard a guy stuck inside the elevator. He called 911 and after 15 or 20 minutes they couldn't open the door. They asked him if he had the keys to the access door behind the elevator and he said no. He called property management and it took about 45 minutes before they called back. The janitor had the key for the door and arrived later. He is concerned in case a pregnant female or someone who was to have a heart attack would be stuck in the elevator.

Mr. Finch replied that the development would have full-time management staff on site 24 hours a day, and a manager will live on the complex. Also, people will be available during business hours with respect to emergency.

Mr. Henmi added that the elevators are hydraulic and in case of a failure, they will descend to the first floor and the doors will open.

Vice Chair Garcia asked what the logic is for breaking this project into two parcels. Mr. Finch said that it allows the developer to get two separate construction loans and for that staff made sure that they will be built both at the same time.

Vice Chair Garcia asked if the northwest corner of Abel and Great Mall will be funded by Fairfield and Mr. Fujimoto replied no and explained that when the city and Fairfield first met, they tried to secure that parcel from the County of Santa Clara.

Vice Chair Garcia asked how will the residents get access from the garage to the apartments. Mr. Finch explained that the levels of the garage match the levels of the housing, so if the resident exceed the fourth level of the garage, they would have to go down to where their house is located.

Vice Chair Garcia was surprised that it is not a gated community and asked what is the rationale. Mr. Finch said that they want to be a good neighbor and the gates do not accomplish that. It is a transit-oriented development and needs to be accessible to residents and the community.

Vice Chair Garcia asked if there are any extra security features. Mr. Finch replied that the public could access the open space area around the development but the living quarters, pool and fitness room are all secured.

Vice Chair Garcia asked if the elevation of the garage is at street level and if it will be built above flood level and Mr. Finch said yes.

Commissioner Mohsin asked what does zone 67 and 68 mean under the noise level section in the staff report. Mr. Fujimoto brought the Commissioner's attention to the acoustical study that was provided and showed that the lines going through represent zone 67 and zone 68 above the line.

Chair Lalwani asked if Zanier will be the elementary school for the project and Mr. Fujimoto said yes. Chair Lalwani asked if there will be a bus that will pick up the children and Mr. Fujimoto said he did not know.

Chair Lalwani asked if the residents walking to the light rail station will have to cross a minimum of two traffic lights and Mr. Fujimoto said yes.

Chair Lalwani asked if the pedestrian paths are wider than usual and Mr. Fujimoto replied that they are 10-foot standard.

Chair Lalwani asked how much rent would be charged for a one bedroom and Mr. Finch replied about \$1,500 for low rent and up to \$3,000 for the highest.

Chair Lalwani mentioned her concerns about the traffic. Mr. Fujimoto said that the traffic report did a study based on rush hour mornings and afternoons and areas that will be impacted are Abel and Great Mall parkway, however, improvements are being done in the Midtown area.

Commissioner Galang asked what are the requirements to rent a singly family home and what are the numbers of people that could live there and asked if pets are allowed. Mr. Finch said that small pets like a cat could be allowed for an additional deposit and typically management will limit, to the extent they can, on how many people could live under one roof depending on the number of bedrooms.

Vice Chair Garcia asked if RDA funds would be available to purchase the small parcel that Santa Clara County owns. Ms. Heyden replied that staff would be looking into that.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

**Close the public hearing on  
Item No. 1**

**Motion** to close the public hearing.

M/S: Azevedo/Williams

AYES: 7

NOES: 0

**Motion** to approve vesting Major Tentative Tract Map No. MA2005-4, Site and Architecture Review NO. SZ2004-9 and Use Permit No. UP2005-3 with staff's modified special conditions and recommendations noted in the staff report.

M/S: Mandal/Williams

AYES: 7

NOES: 0



2.

**USE PERMIT NO.  
UP2005-7**

**Tambri Heyden, Acting Planning and Neighborhood Services Director** presented Use Permit No. UP2005-7, a request to operate a restaurant, Jacko's Chops and Noodles, with 14 seats and beer and wine sales in an existing 1,248 square foot retail space at 228 Barber Lane and recommended approval with conditions.

Ms. Heyden pointed out that a letter was issued to staff on behalf of some concerned tenants from the Milpitas Square Shopping center who are concerned about the applicant moving in because of lack of parking space, refuse overload and grease trap overload. Staff responded to their concerns and tried to get them a copy of the letter, but was unable to reach them. With respect to parking, there are over 70 tenant spaces in the shopping center, many of which are restaurants. They think there is a lack of parking spaces due to conversion of the tenant space from retail to restaurant. Staff did a site visit during lunch hour, and found unoccupied parking spaces scattered throughout the site and also parking spaces provided by the City along Barber Lane. With respect to trash, staff has covered this issue in condition no. 12 that increases the number of BFI pick-ups from 4 to 5 a week.

Vice Chair Garcia asked if the other tenants comply with same number of pick-ups and Ms. Heyden said yes.

Ms. Heyden also pointed out that the tenants do not share grease traps and there is an outside agency that sees to that before a building permit is issued. Staff feels confident that the issues that have been raised will be resolved before the restaurant goes into business.

Vice Chair Garcia noted that his observations of parking during lunch and dinnertime are very busy. He circles the parking lot and never finds parking there and it is very frustrating. Ms. Heyden replied that most of the parking spaces could be found on Barber Lane.

Chair Lalwani asked what was there before and Mr. Fujimoto replied a retail space.

Commissioner Galang had questions about special condition no. 6 which reads as follows:

*\*6 The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)*

Commissioner Galang asked how many times are the training sessions held and if staff monitors the training. Mr. Fujimoto replied that trainings are held on an annual basis. The applicant submits a plan and shows what is covered in the training and usually conducts training when new employees are hired. Ms. Heyden added that the training is self-enforced and staff does not verify that the training has occurred as per the agreement.

Chair Lalwani opened the public hearing.

**Close the public hearing on  
Item No. 2**

**Motion** to close the public hearing.

APPROVED  
May 11, 2005

M/S: Garcia/Mohsin

AYES: 7

NOES: 0

**Motion** to approve Use Permit No. UP2005-7 with staff's special conditions and recommendations.

M/S: Garcia/Mohsin

AYES: 7

NOES: 0

3.

Ms. Heyden presented the following applications:

**1. USE PERMIT  
AMENDMENT NO.  
UA2004-9 AND "S" ZONE  
APPROVAL  
AMENDMENT NO.  
SA2004-91;**

1. Use Permit Amendment No. UA2004-9 and "S" Zone Approval Amendment No. SA2004-91, a request to replace existing 30' freestanding pole sign with an 18' LED sign, rebuild both canopies with flat roofs and other exterior upgrades including replacing building and canopy signage, painting building and replacing pump valences at 1787 S. Main Street.

**2. USE PERMIT NO.  
UP2005-8 AND "S" ZONE  
APPROVAL  
AMENDMENT NO.  
SA2005-27;**

2. Use Permit No. UP2005-8 and "S" Zone Approval Amendment No. SA2005-27, a request to replace two existing monument signs with a new 12' internally illuminated monument sign and install other minor exterior modifications including exterior painting, landscaping, and canopy replacement located at 97 S. Abbott Avenue.

**3. USE PERMIT NO.  
UA2005-5 AND "S" ZONE  
APPROVAL  
AMENDMENT NO.  
SA2005-28;**

3. Use Permit No. UA2005-5 and "S" Zone Approval Amendment No. SA2005-28, a request to replace an existing pole sign with a new 12' internally illuminated monument sign and install other minor exterior modifications including exterior painting, landscaping, and a new canopy fascia located at 27 S. Park Victoria Drive.

Commissioner Williams had requested that Item Nos. 7, 8, and 9 be lumped together because he is concerned about the LED lighted sign. He noted that not too long ago, the sign ordinance was passed which stated that signs would not distract traffic in any way and felt that the LED signs is a new concept and will save the owners a lot of money, however, the sign will causes a distraction and would be a violation. He propose that a condition be added for these three permits to add that they would be in compliance to the sign ordinance so they cannot use it to make the lights blink.

Ms. Heyden noted that the existing sign code and the sign code that is currently being proposed is not specific about this issue, in fact the new proposal allows for more flexibility to review this on a case by case basis. She thought Commissioner William's idea was excellent and suggested the following new condition be added to all three use permit applications which reads as follows:

*Prior to permit issuance, detailed information shall be submitted to staff regarding the light intensity levels and timing between changes in sign copy to ensure that the signage does not produce glare, distract motorists and pedestrians and appear to move or create the illusion of movement. (P)*

Commissioner Williams was very happy with the added condition.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

APPROVED  
May 11, 2005

**Motion** to close the public hearing.

M/S: Williams/Galang

AYES: 7

NOES: 0

**Motion** to approve Use Permit Amendment No. UA2004-9 and "S" Zone Approval Amendment No. SA2004-91; Use Permit No. UP2005-8 and "S" Zone Approval Amendment No. SA2005-27 and Use Permit No. UA2005-5 and "S" Zone Approval Amendment No. SA2005-28 with the modified special condition noted above.

M/S: Williams/Galang

AYES: 7

NOES: 0

**X.  
ADJOURNMENT**

The meeting was adjourned at 8:40 p.m. to the next regular meeting of May 25, 2005.

Respectfully Submitted,

Tambri Heyden  
Acting Planning and Neighborhood  
Services Director

Veronica Rodriguez  
Recording Secretary